



State of California – The Natural Resources Agency  
DEPARTMENT OF FISH AND WILDLIFE  
Bay Delta Region  
7329 Silverado Trail  
Napa, CA 94558  
(707) 944-5500  
[www.wildlife.ca.gov](http://www.wildlife.ca.gov)

EDMUND G. BROWN JR., Governor  
CHARLTON H. BONHAM, Director



**VIA CERTIFIED MAIL**  
(7015 1520 0000 6119 0471)

October 24, 2017

Benjamin Cannon  
4104 24<sup>th</sup> Street # 403  
San Francisco, CA 94114

**Subject:** Notice of Violation of Fish and Game Code sections 1602, 5650 and 5652 in  
Conjunction with Cannabis Cultivation

Dear Mr. Cannon:

On September 28, 2017, California Department of Fish and Wildlife (Department) staff visited your property (APN # 110-060-064), located at 4885 Mill Creek Road, Healdsburg, California 95448, in Sonoma County. During that visit, Department staff observed activities that are in violation of Fish and Game Code (FGC) sections 1602, 5650, and 5652. Staff also observed active cannabis cultivation in conjunction with those activities.

FGC Section 1602 requires a person to submit a written notification to the Department before: 1) substantially diverting or obstructing the natural flow of a river, stream, or lake; 2) substantially changing the bed, channel, or bank of a river, stream, or lake; 3) using any material from the bed, channel, or bank of a river, stream, or lake; and/or 4) depositing or disposing of debris, waste, material containing crumbled, flaked, or ground pavement where it may pass into a river, stream, or lake. Hence, any person who engages in an activity subject to section 1602 without first notifying the Department violates section 1602.

In the Department's view, notification under FGC section 1602 was required for activities observed on September 28, 2017. However, the Department was unable to locate a Lake or Streambed Alteration Agreement for those activities, summarized below.

- Road crossings through stream channels
- Sediment placed in stream channels.

Per FGC sections 5650 and 5652, it is unlawful to pollute waters of the state. FGC section 5650 makes it unlawful to deposit in, permit to pass into, or place where it can pass into waters of the state any substance or material deleterious to fish, plant life, mammals, or bird life, including, but not limited to gasoline or petroleum products and/or sediment. Per FGC section 5652, it is unlawful to deposit in, permit to pass into, or place where it can pass into waters of the state, or to abandon, dispose of, or throw away, within 150 feet of the high water mark of the waters of the state, any garbage, refuse, or waste, among other materials.

Department staff observed the activities described below, which are subject to FGC Section 5650 or 5652.

- Debris and rubbish deposited near the stream;
- Concentrated chemicals near the stream;

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- Motor vehicle antifreeze placed near the stream;
- Gas powered equipment placed near the stream channel; and
- Deleterious sediment in the stream.

A person who violates FGC section 1602, 5650 and/or 5652 in conjunction with the cultivation or production of cannabis is subject to significant penalties or fines. Specifically, the Department may impose civil penalties administratively against any person found by the Department to have violated these FGC sections in connection with the production or cultivation of cannabis following a complaint and, if requested, a hearing.

The Department may request a maximum civil penalty of \$8,000 for each violation of FGC section 1602, and \$20,000 for each violation of FGC section 5650 or 5652. Each day the violation occurs or continues to occur constitutes a separate violation. [FGC section 12025, subds. (b)(1)(A)(B)(C), (2); (e)]. Also, the District Attorney or the Attorney General may enforce a violation of FGC section 1602 and FGC section 5650 civilly. Specifically, under FGC sections 1615 and 5650.1 a person who violates section 1602 or 5650 is subject to a maximum civil penalty of \$25,000 for each violation. The District Attorney or Attorney General may also enforce a violation of FGC sections 1602 and 5650 criminally. Under FGC section 12000, each violation is a misdemeanor.

As a first step to address this matter, the Department requests you contact Senior Environmental Scientist (Specialist) Timothy Dodson at (707) 944-5513 or via email at [timothy.dodson@wildlife.ca.gov](mailto:timothy.dodson@wildlife.ca.gov) within 14 days of the date of this letter. Mr. Dodson may propose certain actions to protect fish and wildlife resources that have been affected by activities described above, and may ask you to submit a written notification and fee for the activities. While the Department, District Attorney, or Attorney General may still decide to initiate an enforcement action against you if they determine these activities are in violation of FGC sections 1602, 5650 and 5652, we encourage you to respond to this notice so that we may better assess the activity and limit any damage to resources.

The Department appreciates your cooperation.

Sincerely,



Lieutenant Steve White  
Law Enforcement Division

cc: North Coast Regional Water Quality Control Board  
Kason Grady, [kason.grady@waterboards.ca.gov](mailto:kason.grady@waterboards.ca.gov)  
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EDMUND G. BROWN, Jr., Governor  
CHARLTON H. BONHAM, Director



Date: October 27, 2017

To: California Department of Fish and Wildlife  
Lieutenant Steve White  
Law Enforcement Division  
Watershed Enforcement Team

From: California Department of Fish and Wildlife  
Timothy Dodson  
Senior Environmental Scientist (Specialist)  
Watershed Enforcement Team

Subject: **Violation of Fish and Game Code sections 1602, 5650, and 5652 in Conjunction with Cannabis Cultivation, Cannon Property, Sonoma County**

On September 28, 2017, California Department of Fish and Wildlife (CDFW) scientific staff and Sonoma County Code Enforcement staff conducted a partial inspection of the Cannon property (APN # 110-060-064, 51.88 acres), located at 4885 Mill Creek Road, Healdsburg, California 95448, in Sonoma County. CDFW and Sonoma County staff were given consent to view the property and were accompanied by the owners attorney. This memorandum is a summary of site conditions observed during the inspection. At your request, a more detailed environmental impact assessment will be prepared.

An objective of scientific staff was to observe the property and document any apparent Fish and Game Code violations. These violations could range from alterations to stream channels, water diversions, pollution to streams, or other activities that have the potential to impact fish and wildlife resources. Unnamed tributaries to Mill Creek are on the Cannon property.

During the inspection, live cannabis was actively being cultivated at two distinct hillside clearings with graded landings. In connection with the cultivation of cannabis on the property, apparent Fish and Game Code violations were observed. The relevant Fish and Game Code sections are:

- §1602,
- §5650, and
- §5652

Table 1 below summarizes the locations and violation types that were found during the limited property inspection.

**Table 1.**  
**Summary of Violations at APN#: 110-060-064**

Site name	Approximate Location*	Description of Violation	FGC Section	Violation Description
A	38.58806, -122.94255	Stream crossing with road fill in channel.	1602(a)	Substantial alteration
			5650(a)6	Deleterious sediment
B	38.58812, -122.94265	Grow chemicals, vehicle antifreeze, gas can and petroleum powered equipment placed near a stream.	5650	Deleterious nutrients and substance
			5650(a)(1)	Petroleum product placed where it can enter waters of the state.
C	38.58803, -122.94288	Sediment pushed into a stream channel along approximately 80 feet of stream	5650(a)6	Deleterious sediment
D	38.58821, -122.94311	Hoop houses with raised beds filled with loose and spilled potting soil	5650(a)(6)	Deleterious nutrients
E	38.58901, -122.94321	Stream crossing with road fill in channel	1602(a)	Substantial alteration
			5650(a)6	Deleterious sediment
F	38.58905, -122.94328	Loose unconsolidated sediment	5650(a)6	Deleterious sediment

\* Location coordinates were taken using handheld Garmin Rino 750t, using North American Datum 83.

The two cultivation areas on the property can be described as the "upper" and "lower" cultivation area because one is located higher up the main hillside access road than the other. At both sites, landings appeared to have been created by cutting into the hillside and pushing soil on the slope to create a landing. The cut slopes were as much as ten feet high with fill slopes as much as 20 feet tall. The grading work to creating the



landings did not appear to be a professional job or follow typical design or construction practices.

Soil was pushed or allowed to cascade into two stream channels. Bare exposed mineral soil has been discharged into the water courses from grading. The soil along the toe of the fill slope was loose and un-compacted. It was obvious that trees and shrubs that stood on the fill slope were left in place and smothered by fill. Access around and between the hoop houses was limited as they were located on edge of the landing and abutted each other. The practices used to build this landing may result in significant erosion, sediment runoff, and potential mass wasting. As the buried vegetation decomposes and the partially buried trees on the fill slope die, voids in the fill will be created that will be replaced by soil, potentially causing settlement and sloughing of the fill. Image 1 below shows hoop houses and the fill slope at the lower cultivation area.



Image 1. Hoop houses are located on the edge of the landing. The fill slope soil is loose and un-compacted with vegetation mixed in and standing trees on the slope covered with fill.

A dirt road accesses the two cultivation areas from an entrance off Mill Creek Road. The road was in poor condition with uneven hummocky topography and thick drifts of loose soil. The road crossed at least two ephemeral stream channels. Road fill was placed in the flow path of the streams without providing any water conveyance pathway. This may





Image 2. Stream channel flowing towards the bottom of the image. Picture taken from the roadway looking upstream. The road crosses through the channel with dirt fill. On the left, petroleum powered equipment and a gas can is placed next to the stream channel.

result in sediment runoff and erosion as the streams flow through the road fill. Image 2 below shows one of the streams that is crossed by the access road.

Image 3 below shows the same crossing shown in Image 2 from another perspective. The road fill is placed in the channel along the road and bare soil from grading has been pushed into the stream. Slash and debris have also been deposited into the channel.

### **Ecological Significance**

Unnamed tributaries at the Cannon property flow to Mill Creek. Mill Creek flows to Dry Creek then the Russian River. Impaired water quality in the unnamed tributaries from sediment, petroleum, and nutrients can adversely affect fish and wildlife resources on the property and downstream into the receiving waters. In addition, land clearing and development activities affecting terrestrial habitats can adversely affect fish and wildlife resources.



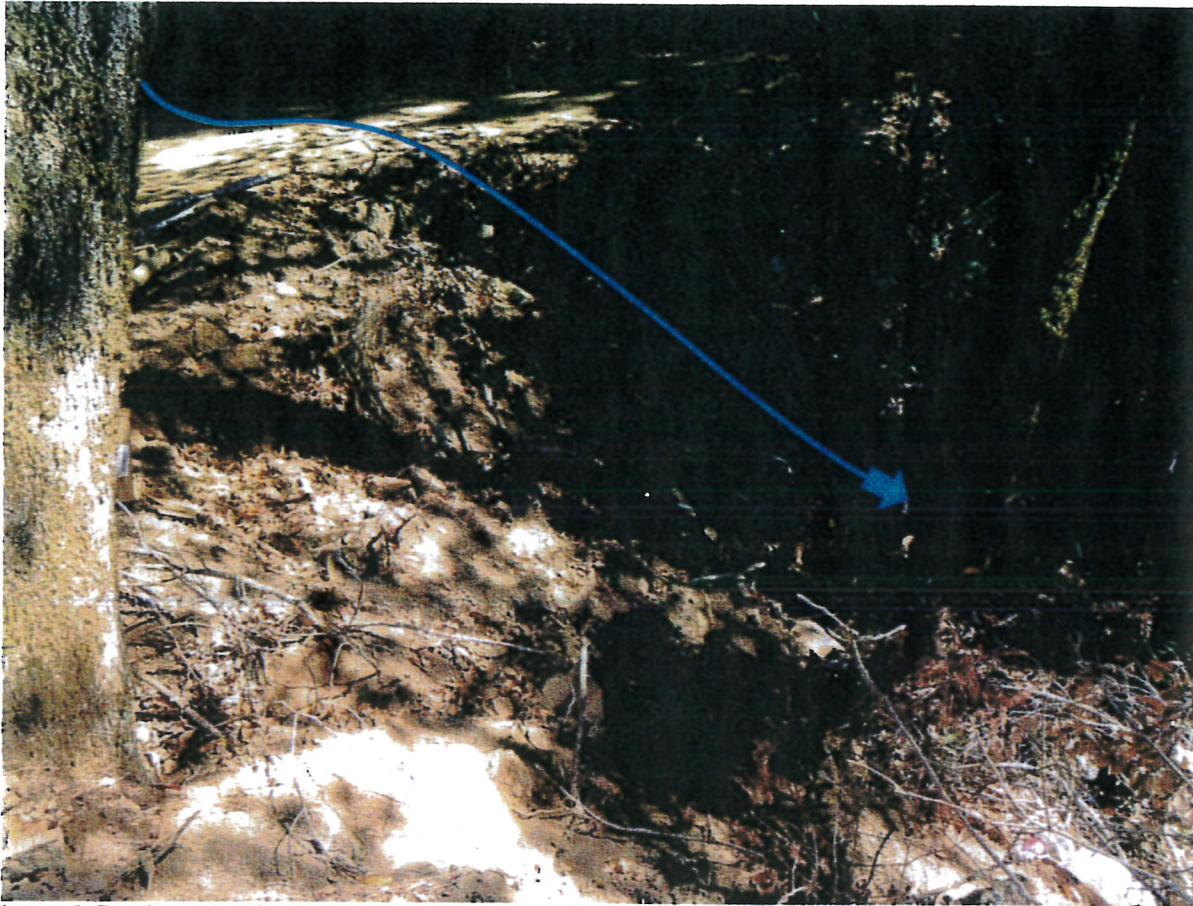


Image 3: Road crossing through the ephemeral stream channel. The road fill is placed in the stream along with slash debris from the grading.

The Russian River and Mill Creek are habitat to numerous threatened, endangered, and special status species. Of particular concern are salmonid species that utilize the watercourses. The Central California Coast (CCC) coho salmon is listed as "endangered" pursuant to the California Endangered Species Act (CESA) and the federal Endangered Species Act (ESA). CCC steelhead and California coastal (CC) Chinook salmon are listed as "threatened" pursuant to the ESA. These three sensitive salmonid species are documented to occur in the Russian River and Mill Creek. The National Marine Fishers Services and CDFW have developed recovery plans with the goal of ultimately removing these species from the threatened and endangered species lists. Any incremental degradation to the species or their habitat is a challenge to the recovery goals. Mill Creek is one of the five core watersheds identified in the recovery plans.

The entire Russian River watershed is listed as "impaired" under Section 303(d) of the Clean Water Act for excessive sediment load and for high water temperatures. The North Coast Regional Water Quality Control Board has found that human-caused land management activities increase nonpoint source sediment runoff to water bodies in amounts far above natural background levels. Roads and timber harvesting activities

are often the most significant anthropogenic source of sediment runoff. Any incremental increase in sedimentation or thermal pollution is potentially significant to water quality and the beneficial uses of the waterway.

### **Reservoir**

A legacy on-stream reservoir is on the property. The reservoir does not have an appropriative water right from the State Water Resources Control Board and it has not been authorized by CDFW through a Streambed Alteration Agreement. The owner should ensure that this reservoir is authorized by an appropriative water right issued by the State Water Board and authorized by CDFW.

### **In Summary**

No record of an LSAA notification or issuance of a LSAA for the Cannon property exists on CDFW's Project Tracking database. Had a LSAA been issued, avoidance and minimization measures would have been included that could avoid, minimize and mitigate environmental impacts. Un-permitted work does not meet CDFW LSA program permitting standards. Pollution sources, infrastructure, and work activities documented herein are environmentally damaging. It is reasonable to conclude that on-site and downstream fish and wildlife resources have been substantially adversely affected by activities related to cannabis cultivation at the Cannon property.

Please feel free to contact Timothy Dodson, Senior Environmental Scientist (Specialist) by phone at (707) 944-5513 or via email at [timothy.dodson@wildlife.ca.gov](mailto:timothy.dodson@wildlife.ca.gov) if you have any questions or need further assistance.

cc: California Department of Fish and Wildlife

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